

FEDERAL CONSISTENCY INFORMATION PACKAGE
For
VIRGINIA COASTAL ZONE MANAGEMENT PROGRAM
Prepared by
DEPARTMENT OF ENVIRONMENTAL QUALITY

CONTENTS

Introduction	3
Federal Consistency Requirement.....	4
Definition of Federal Actions.....	4-5
Virginia’s Designated Coastal Management Area	5-6
Enforceable Policies	6-8
Advisory Policies	8-10
Review Procedure	10-13
Federal Agency and Development Projects.....	10-11
Federal Permit, License, and Approval.....	12
Federal Assistance.....	13
Outer Continental Shelf	13-14
Public Participation.....	14
Federal Consistency Determination Outline.....	15
Federal Consistency Certification Outline.....	16-17
Listed Activities	
Table 1 – Federal Agencies Activities.....	18
Table 2 – Federal Permits or Licenses.....	19-20
Table 3 – Federal Assistance Activities	21
Map of Virginia Coastal Zone	22
List of State Agencies Contacts.....	23-26

For more information, contact:

Ellie L. Irons
Program Manager
Office of Environmental Impact Review
629 East Main Street
Richmond, Virginia 23219
(804) 698-4325

or

John E. Fisher
EIR/Consistency Coordinator
Office of Environmental Impact Review
629 East Main Street
Richmond, Virginia 23219
(804) 698-4339

FEDERAL CONSISTENCY INFORMATION
Prepared by
DEPARTMENT OF ENVIRONMENTAL QUALITY
Office of Environmental Impact Review

INTRODUCTION

The Federal Consistency Information Package for the Virginia Coastal Zone Management Program (VCP) (previously referred to as Virginia Coastal Resources Management Program) incorporates and reflects recent changes to the federal consistency regulations. Effective January 8, 2001, the National Oceanic and Atmospheric Administration (NOAA) revised the regulations implementing the federal consistency provisions of the Coastal Zone Management Act (CZMA) of 1972 (see link [Coastal Zone Management Act](http://coastalmanagement.noaa.gov/czm/czm_act.html) or go to http://coastalmanagement.noaa.gov/czm/czm_act.html.)

The revisions were necessary based on new provisions in the 1990 Coastal Zone Act Reauthorization Amendments (CZARA) and the 1996 Coastal Zone Protection Act. Among the amendments were revisions to the federal consistency requirement contained in section 307 of the CZMA. The 1990 CZMA amendments clarified that all federal agency activities meeting the “effects” standard are subject to CZMA consistency and that there are no exceptions, exclusions or categorical exemptions from the requirement. The regulations were further revised in 2006 in response to *The National Energy Policy Development Group’s Report* (May 2001) (Energy Report) and the *Energy Policy Act of 2005*. Section 319 of the CZMA was amended by Section 381 of the Energy Policy Act of 2005 (Pub. L. No. 109-58) to mandate deadlines for decisions on appeals of consistency determination under the CZMA. Section 382 specified that the initial record to be used for CZMA appeals of energy projects is the record consolidated by the lead federal permitting agency.

This information package is intended to help federal agencies, applicants for federal permits, licenses, or approvals, and recipients of federal assistance to comply with the federal consistency requirements of the CZMA, as amended. Pursuant to the CZMA, in 1986, the NOAA approved the Virginia Coastal Zone Management Program. Accordingly, federal activities which are reasonably likely to affect any land or water use or natural resources of Virginia’s designated coastal resources management area must be consistent with the enforceable policies of the VCP. The VCP is a networked program with several agencies administering the enforceable policies. Virginia also has several advisory policies which were established to serve as a discretionary guide during project planning. As the lead agency for the VCP, the Department of Environmental Quality (DEQ) is responsible for coordinating the Commonwealth’s review of federal consistency determinations and certifications with cooperating agencies and responding to the appropriate federal agency or applicant. At the federal level, NOAA, through its Office of Ocean and Coastal Resource Management (OCRM) oversees DEQ’s use of consistency, mediates consistency disputes, and processes appeals to the Secretary of Commerce.

FEDERAL CONSISTENCY

The federal consistency regulations implement the CZMA requirement that federal actions (regardless of location) that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone (also referred to as coastal uses or resources, or coastal effects) must be consistent with the enforceable policies of a coastal state's federally approved coastal management program, before they can occur. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Cumulative effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

Some examples of coastal uses include such activities as: public access, recreation, fishing, historic or cultural preservation, development, energy infrastructure and use, hazards management, marinas, floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration. Coastal resources include biological or physical resources that are found within a state's coastal zone on a regular or cyclical basis. Biological and physical resources include, but are not limited to, air, tidal and non-tidal wetlands, ocean waters, estuaries, rivers, streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, and reptiles, etc.

The official 2007 version of the CZMA federal consistency regulations is available at this link: [Federal Consistency Regulations – 15 C.F.R. part 930](http://coastalmanagement.noaa.gov/consistency/media/15CFRPart930_2007.pdf) or go to http://coastalmanagement.noaa.gov/consistency/media/15CFRPart930_2007.pdf

DEFINITION OF FEDERAL ACTIONS

There are four types of federal actions: Federal agency activities, federal license or permit activities, outer continental shelf (OCS) plans, and federal assistance to state and local governments.

1. Federal agency activities (15 C.F.R. part 930, subpart C) - activities and development projects performed by a Federal agency, or a contractor for the benefit of a Federal agency. Examples are Fisheries Plans by the National Marine Fisheries Service, Naval exercises, the disposal of federal land by the General Services Administration, a U.S. Army Corps of Engineers (Corps) breakwater or beach nourishment project, an OCS oil and gas lease sale by the Minerals Management Service (MMS), improvements to a military base, Naval disposal of radioactive or hazardous waste performed by a private contractor, activities in National Parks such as installation of mooring buoys or road

construction, and projects submitted under the residual category pursuant to 15 CFR 930.31(c). This residual category under subpart C is reserved for “other federal agency activity” which the federal agency determines will have reasonably foreseeable coastal effects, but which does not fall under 15 C.F.R. part 930, subpart D (federal license or permit), subpart E (OCS plans), or subpart F (federal assistance to state agency or local government). For example, if a federal agency is providing funds to a private citizen for disaster relief from a hurricane, and the funds will be used for an activity with coastal effects, then the federal agency follows the requirements for federal agency activities and provides the DEQ with a consistency determination (FCD). HUD submits FCDs under this residual category for mortgage insurance provided for private development projects;

2. Federal license or permit activities (15 C.F.R. part 930, subpart D) - activities performed by a non-federal entity requiring federal permits, licenses or other forms of federal authorization. Examples are Corps 404 permits, Corps permits for use of ocean dump-sites, Nuclear Regulatory Commission licenses for nuclear power plants, and licenses from the Federal Energy Regulatory Commission (FERC) for hydroelectric facilities;

3. Outer Continental Shelf (OCS) plans for exploration, development, and production activities (15 C.F.R. part 930, subpart E) - MMS approvals for OCS plans, pursuant to the Outer Continental Shelf Lands Act. The CZMA process is similar to federal license or permit activities; and

4. Federal assistance to state and local governments (15 C.F.R. part 930, subpart F) - included in this category are Federal Highway Administration funds to state and local governments, construction grants for wastewater treatment works, and U.S. Department of Housing and Urban Development grants (HUD).

AUTHORITY

The Virginia Coastal Zone Management Program was authorized by Virginia Executive Order (EO) Number Thirteen (86), and continued by subsequent Executive Orders, the most recent being EO 18 (2010).

VIRGINIA'S DESIGNATED COASTAL MANAGEMENT AREA

Virginia's Coastal Management Area includes most of Tidewater Virginia, as defined by *Virginia Code §28.2-100* (see map at Page 22), and all coastal waters of the United States territorial sea, extending to the three-mile limit of Virginia sovereignty, including all of Virginia's Atlantic coast watershed as well as parts of the Chesapeake Bay and Albemarle - Pamlico Sound watersheds. Virginia coastal zone includes 5,000 miles of shoreline, four tidal rivers reaching as far as 100 miles inland - the Potomac, Rappahannock, York, and James rivers. There are at least 88 jurisdictions in the coastal management area. The following 29 counties are located in the coastal management area (42 towns within these counties are also included):

Accomack	Isle of Wight	Northumberland
Arlington	James City	Prince George
Caroline	King George	Prince William
Charles City	King and Queen	Richmond
Chesterfield	King William	Spotsylvania
Essex	Lancaster	Stafford
Fairfax	Mathews	Surry
Gloucester	Middlesex	Westmoreland
Hanover	New Kent	York
Henrico	Northampton	

The following 17 cities are located in Virginia's coastal management area:

Alexandria	Hampton	Portsmouth
Chesapeake	Hopewell	Richmond
Colonial Heights	Newport News	Suffolk
Fairfax	Norfolk	Virginia Beach
Falls Church	Petersburg	Williamsburg
Fredericksburg	Poquoson	

Federal Lands: federal lands, the use of which is by law subject solely to the discretion of or which is held in trust by the federal government, its officers or agents, are excluded from Virginia's coastal management area. However, activities on federal lands with any reasonably foreseeable coastal effects must be consistent with the VCP.

ENFORCEABLE POLICIES COMPRISING VIRGINIA'S COASTAL ZONE MANAGEMENT PROGRAM

- a. Fisheries Management - The program stresses the conservation and enhancement of finfish and shellfish resources and the promotion of commercial and recreational fisheries to maximize food production and recreational opportunities. This program is administered by the Marine Resources Commission (MRC) (Virginia Code §28.2-200 through §28.2-713) and the Department of Game and Inland Fisheries (DGIF) (Virginia Code §29.1-100 through §29.1-570).

The State Tributyltin (TBT) Regulatory Program has been added to the Fisheries Management program. The General Assembly amended the Virginia Pesticide Use and Application Act as it related to the possession, sale, or use of marine antifoulant paints containing TBT. The use of TBT in boat paint constitutes a serious threat to important marine animal species. The TBT program monitors boating activities and boat painting activities to ensure compliance with TBT regulations promulgated pursuant to the amendment. The MRC, DGIF, and Virginia Department of Agriculture and Consumer Services share enforcement responsibilities (Virginia Code §3.1-249.59 through §3.1-249.62).

- b. Subaqueous Lands Management - The management program for subaqueous lands establishes conditions for granting or denying permits to use state-owned bottomlands based on considerations of potential effects on marine and fisheries resources, wetlands, adjacent or nearby properties, anticipated public and private benefits, and water quality standards established by the DEQ Water Division. The program is administered by the MRC (Virginia Code §28.2-1200 through §28.2-1213).
- c. Wetlands Management - The purpose of the wetlands management program is to preserve tidal wetlands, prevent their despoliation, and accommodate economic development in a manner consistent with wetlands preservation. (i) The tidal wetlands program is administered by the MRC (Virginia Code §28.2-1301 through §28.2-1320).

(ii) The Virginia Water Protection Permit program administered by the DEQ includes protection of wetlands --both tidal and non-tidal. This program is authorized by Virginia Code § 62.1-44.15.5 and the Water Quality Certification requirements of §401 of the Clean Water Act of 1972.
- d. Dunes Management - Dune protection is carried out pursuant to the Coastal Primary Sand Dune Protection Act and is intended to prevent destruction or alteration of primary dunes. This program is administered by the Marine Resources Commission (Virginia Code §28.2-1400 through §28.2-1420).
- e. Non-point Source Pollution Control - Virginia's Erosion and Sediment Control Law requires soil-disturbing projects to be designed to reduce soil erosion and to decrease inputs of chemical nutrients and sediments to the Chesapeake Bay, its tributaries, and other rivers and waters of the Commonwealth. This program is administered by the Department of Conservation and Recreation (DCR) (Virginia Code §10.1-560 et.seq.).
- f. Point Source Pollution Control - The point source program is administered by the State Water Control Board pursuant to Virginia Code §62.1-44.15. Point source pollution control is accomplished through the implementation of the National Pollutant Discharge Elimination System (NPDES) permit program established pursuant to §402 of the federal Clean Water Act and administered in Virginia as the VPDES permit program. The Water Quality Certification requirements of §401 of the Clean Water Act of 1972 is administered under the Virginia Water Protection Permit program.
- g. Shoreline Sanitation - The purpose of this program is to regulate the installation of septic tanks, set standards concerning soil types suitable for septic tanks, and specify minimum distances that tanks must be placed away from streams, rivers, and other waters of the Commonwealth. This program is administered by the Department of Health (Virginia Code §32.1-164 through §32.1-165).

- h. Air Pollution Control - The program implements the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the attainment and maintenance of the National Ambient Air Quality Standards. This program is administered by the State Air Pollution Control Board (Virginia Code §10.1-1300 through 10.1-1320).
- i. Coastal Lands Management is a state-local cooperative program administered by the DCR's Division of Stormwater Management – Local Implementation (previously the Division of Chesapeake Bay Local Assistance) and 88 localities in Tidewater, Virginia established pursuant to the Chesapeake Bay Preservation Act; Virginia Code §§ 10.1-2100 through 10.1-2114 and Chesapeake Bay Preservation Area Designation and Management Regulations; Virginia Administrative code 9 VAC10-20-10 et seq.

ADVISORY POLICIES OF VIRGINIA'S COASTAL ZONE MANAGEMENT PROGRAM

Advisory Policies for Geographic Areas of Particular Concern

Although not required for the purposes of consistency, in accordance with 15 CFR §930.39(c), the federal agency should consider the advisory policies (recommendations) of the VCP as well.

- a. Coastal Natural Resource Areas - These areas are vital to estuarine and marine ecosystems and/or are of great importance to areas immediately inland of the shoreline. Such areas receive special attention from the Commonwealth because of their conservation, recreational, ecological, and aesthetic values. These areas are worthy of special consideration in any planning or resources management process and include the following resources:
 - i) Wetlands
 - ii) Aquatic Spawning, Nursery, and Feeding Grounds
 - iii) Coastal Primary Sand Dunes
 - iv) Barrier Islands
 - v) Significant Wildlife Habitat Areas
 - vi) Public Recreation Areas
 - vii) Sand and Gravel Resources
 - viii) Underwater Historic Sites.
- b. Coastal Natural Hazard Areas - This policy covers areas vulnerable to continuing and severe erosion and areas susceptible to potential damage from wind, tidal, and storm related events including flooding. New buildings and other structures should be designed and sited to minimize

the potential for property damage due to storms or shoreline erosion. The areas of concern are as follows:

- i) Highly Erodible Areas
 - ii) Coastal High Hazard Areas, including flood plains.
- c. Waterfront Development Areas - These areas are vital to the Commonwealth because of the limited number of areas suitable for waterfront activities. The areas of concern are as follows:
- i) Commercial Ports
 - ii) Commercial Fishing Piers
 - iii) Community Waterfronts

Although the management of such areas is the responsibility of local government and some regional authorities, designation of these areas as Waterfront Development Areas of Particular Concern (APC) under the VCP is encouraged. Designation will allow the use of federal CZMA funds to be used to assist in planning for such areas and in the implementation of such plans. The VCP recognizes two broad classes of priority uses for waterfront development APC:

- i) water access-dependent activities;
- ii) activities significantly enhanced by the waterfront location and complementary to other existing and/or planned activities in a given waterfront area.

Advisory Policies for Shorefront Access Planning and Protection

- a. Virginia Public Beaches - Approximately 25 miles of public beaches are located in the cities, counties, and towns of Virginia exclusive of public beaches on state and federal land. These public shoreline areas will be maintained to allow public access to recreational resources.
- b. Virginia Outdoors Plan - Planning for coastal access is provided by the DCR in cooperation with other state and local government agencies. The Virginia Outdoors Plan (VOP), which is published by the Department, identifies recreational facilities in the Commonwealth that provide recreational access. The VOP also serves to identify future needs of the Commonwealth in relation to the provision of recreational opportunities and shoreline access. Prior to initiating any project, consideration should be given to the proximity of the project site to recreational resources identified in the VOP.
- c. Parks, Natural Areas, and Wildlife Management Areas - Parks, Wildlife Management Areas, and Natural Areas are provided for the recreational pleasure of the citizens of the Commonwealth and the nation by local,

state, and federal agencies. The recreational values of these areas should be protected and maintained.

- d. Waterfront Recreational Land Acquisition - It is the policy of the Commonwealth to protect areas, properties, lands, or any estate or interest therein, of scenic beauty, recreational utility, historical interest, or unusual features which may be acquired, preserved, and maintained for the citizens of the Commonwealth.
- e. Waterfront Recreational Facilities - This policy applies to the provision of boat ramps, public landings, and bridges which provide water access to the citizens of the Commonwealth. These facilities shall be designed, constructed, and maintained to provide points of water access when and where practicable.
- f. Waterfront Historic Properties - The Commonwealth has a long history of settlement and development, and much of that history has involved both shorelines and near-shore areas. The protection and preservation of historic shorefront properties is primarily the responsibility of the Department of Historic Resources. Buildings, structures, and sites of historical, architectural, and/or archaeological interest are significant resources for the citizens of the Commonwealth. It is the policy of the Commonwealth and the VCP to enhance the protection of buildings, structures, and sites of historical, architectural, and archaeological significance from damage or destruction when practicable.

VIRGINIA'S REVIEW PROCEDURE

1. Federal Agency Activities and Development Projects (15 CFR Part 930, Subpart C)

All federal development projects inside the coastal zone are automatically subject to the consistency regulations and require a federal consistency determination. Also, any federal action outside the coastal zone which has the potential to affect Virginia's coastal uses and resources is subject to consistency review since there are no geographical boundaries. Consistency is triggered by the "reasonably foreseeable effects" test.

Step 1. The federal agency determines whether coastal effects are reasonably foreseeable. Effects can be direct, indirect, cumulative, or secondary. Also, effects are not limited to environmental impacts but include coastal uses such as public access and recreational uses. It is beneficial if the federal agency consults with agencies administering the enforceable policies early in the planning process to determine potential impacts of a proposal.

Step 2. (a) If there are no effects, the federal agency provides the DEQ with a negative determination at least 90 days prior to final approval (15 CFR § 930.35). (b) If there are effects, the federal agency submits a consistency determination to

the DEQ at least 90 days prior to final approval. The Commonwealth has 60 days to review both consistency determinations and negative determinations and reserves the right, when necessary, to request an additional 15 days to complete its review. The 60-day review period begins when DEQ receives the consistency determination and sufficient supporting information as described in 15 CFR Part 930, §930.39(a).

Step 3. DEQ publishes the consistency determination for public review. In the absence of public comments, if prior consultation with agencies occurred prior to submittal of the negative determination and agencies concurred with the federal agency's determination, DEQ sends a response to the federal agency concurring with the determination. If agencies were not previously contacted by the federal agency, DEQ distributes the consistency determination to agencies administering the coastal policies. Federal agencies should provide 20 copies of the consistency document to DEQ for distribution unless the documents were sent directly to the reviewers.

Step 4. Reviewers send comments on federal agency determinations to DEQ. If reviewers indicate that the information is inadequate, DEQ attempts to obtain the additional information within the 60-day review period. If the federal agency is unable to provide the necessary information in a timely manner, DEQ may object based on insufficient information (15 CFR §930.43(b)). In this case, DEQ's objection would describe the information necessary to determine consistency of the federal action with the enforceable policies of the VCP. A copy of each objection is sent to the Director of OCRM.

Step 5. If agencies have completed their reviews, DEQ prepares the Commonwealth's coordinated response to the federal agency. DEQ resolves any conflicts in reviewers' comments or seeks clarifications from reviewers before responding to the federal agency. DEQ requests time extensions when needed for agencies to complete their review.

Step 6. If there are effects, the federal agency must conduct the activity in a manner that is consistent with the VCP to the maximum extent practicable as defined in 15 CFR §930.32.

Step 7. If there is a dispute, DEQ will attempt to resolve the differences between the federal agency and state agencies within the remaining portion of the 90-day notice period. At the end of the 90-day period, if a resolution has not been reached, DEQ or the federal agency can request mediation by the Secretary of Commerce or OCRM.

National Environmental Policy Act (NEPA). In instances where a project is subject to the requirements of NEPA, DEQ encourages the federal agency to include its consistency determination in the NEPA document as a matter of administrative convenience as well as to provide environmental information to support the consistency determination. See 15 CFR §930.37.

2. Review Procedure for Federal Permit, License, and Approval Activities (15 CFR Part 930, Subpart D)

All activities located within Virginia's designated coastal management area (Tidewater) requiring a federal permit, license, or approval must be consistent with Virginia's Coastal Zone Management Program.

Step 1. Virginia, with OCRM approval, determines activities with coastal effects:

- a. listed versus unlisted activity
- b. inside versus outside coastal zone

Step 2. For a listed activity (see Table 2) occurring in Tidewater, the applicant must submit a federal consistency certification (FCC) to the responsible federal agency and the DEQ. The applicant must provide DEQ with the necessary data and information (15 CFR §930.58) to allow the agencies administering the enforceable policies to assess the project's effects. The review of listed activities outside of the coastal zone and unlisted activities inside or outside the coastal zone will be reviewed on a case-by-case basis following the procedures for unlisted activities pursuant to 15 CFR §930.54.

Step 3. DEQ establishes deadlines and distributes the documents to reviewers. If there are applicable enforceable policies, DEQ will coordinate a consistency review for those activities. The six-month review begins upon receipt of the required information. If the only applicable enforceable policies are permit programs under the jurisdiction of Virginia's laws, and the applicant has received all the applicable permits or approvals, DEQ may decide to do an in-house review of the consistency certification. To facilitate this uncoordinated or limited review, the applicant must attach the pertinent approvals to the FCC.

Step 4. DEQ publishes the public notice pursuant to 15 CFR §930.61. In some instances, DEQ requires that the applicant publishes the notice or may combine the notice with the notice by the federal agency (if the federal agency agrees). Public participation may include public hearings.

Step 5. DEQ responds within 90 days either concluding the review or providing an update of the status of the review (15 CFR §930.62). No further action is necessary if the Commonwealth concurs. For projects still under review, DEQ will notify the federal agency and the applicant of the status of the review and the basis for further delay. DEQ will respond within the 6-month legal deadline.

Step 6. The federal agency cannot issue its approval if Virginia objects (15 CFR §930.64).

Step 7. The applicant may work with DEQ and state agencies administering the enforceable policies to remove the Commonwealth's objection or appeal the objection to the Secretary of Commerce within 30 days of the objection. If the Secretary overrides Virginia's objection, the federal agency may approve the project.

3. Review Procedure for Federal Assistance Projects (15 CFR Part 930, Subpart F)

Any state agency or local government applying for federal financial assistance (grant or contractual arrangements, loans, subsidies, guarantees, insurance or other forms of financial assistance) to conduct activities in Virginia's designated coastal zone which can affect coastal resources or uses must certify that the proposed activity will be conducted in a manner which is consistent with the VCP (15 CFR §930.94).

Step 1. Virginia, with OCRM approval, determines activities with coastal effects (see Table 3).

Step 2. Applicants for federal assistance submit application and necessary information to DEQ pursuant to Executive Order 12372 "Intergovernmental Review of Federal Programs."

Step 3. For listed activities, DEQ conducts the review concurrently with the intergovernmental review. If none of the enforceable policies are applicable, no further action is required for the purposes of consistency. If the applicable enforceable policies are administered through permit programs, DEQ may issue a conditional concurrence contingent upon the applicant obtaining all applicable permits. If the applicant claims an exemption from the Commonwealth's permitting process, DEQ contacts the agencies administering the enforceable policies to ensure the project is consistent with the enforceable policy although a permit is not required.

Step 4. DEQ determines coastal effects of unlisted activities inside the coastal zone during the intergovernmental review process. No further action is taken for the purposes of consistency for projects with no coastal effects. For projects with coastal effects, DEQ informs the applicant and the federal agency that the project will be reviewed under the federal consistency provisions of the CZMA.

Step 5. The federal agency may not issue funding until Virginia has concurred that the project is consistent with the VCP (15 CFR §930.97).

Step 6. The applicant can work with state agencies to remove the Commonwealth's objection or appeal the objection to the Secretary of Commerce within 30 days of the objection.

4. Review Procedure for Outer Continental Shelf Activities (15 CFR Part 930, Subpart E)

Any OCS plan submitted to the Secretary of the Interior, or designee, which describes in detail federal license or permit activities affecting any coastal use or resource must ensure that such activities will be conducted in a manner which is consistent with Virginia's Coastal Zone Management Program. The procedure

for reviewing OCS plans is similar to the procedure for reviewing Federal Permit, License, and Approval Activities (see Pages 11-12 above).

PUBLIC PARTICIPATION

DEQ ensures that consistency reviews comply with the public participation requirements of Section 306(d)(14) of the Coastal Zone Management Act of 1972, as amended, and 15 CFR §930.2, §930.42, §930.61, and §930.77(b). Virginia utilizes several different procedural options to notify the public of projects under review. These options include: joint federal/state notices, publications in local newspapers, notices published in the Virginia Gazette, electronic notices published on DEQ's web site and Federal agencies' websites, and joint federal/state public hearings.

Federal Consistency Determination Outline

This document is an outline for Federal agencies to use when making a Consistency Determination under the Coastal Zone Management Act, sections 307(c)(1) and (2). Although not required for the purposes of consistency, in accordance with 15 CFR §930.39(c), the federal agency should consider the advisory policies (recommendations) of the VCP as well.

Coastal Zone Management Act (CZMA) Consistency Determination

This document provides the Commonwealth of Virginia with the [name of applicant's] Consistency Determination under CZMA section 307(c)(1) [or (2)] and 15 CFR Part 930, subpart C, for the [name of federal activity]. The information in this Consistency Determination is provided pursuant to 15 CFR §930.39. This activity includes:

[Describe the Federal agency activity or reference relevant pages of National Environmental Policy Act (NEPA) document].

The [name of Federal agency] has determined that the [activity] affects the land or water uses or natural resources of Virginia in the following manner:

[Provide analysis of effects or reference relevant pages of NEPA document].

The Virginia Coastal Zone Management Program contains the following applicable enforceable policies:

[List and/or briefly describe the State's applicable enforceable policies and describe any reasonably foreseeable effect on each enforceable policy].

Based upon the following information, data, and analysis, the [name of Federal agency] finds that the [activity] is consistent to the maximum extent practicable with the enforceable policies of the Virginia Coastal Zone Management Program. [Provide information, comprehensive data, and analysis supporting the determination of consistency with the applicable enforceable policies.].

Pursuant to 15 CFR Section 930.41, the Virginia Coastal Zone Management Program has 60 days from the receipt of this letter in which to concur with or object to this Consistency Determination, or to request an extension under 15 CFR section 930.41(b). Virginia's concurrence will be presumed if its response is not received by the [name of Federal agency] on the 60th day from receipt of this determination. The State's response should be sent to:

[provide Federal agency contact information].

Federal Consistency Certification Outline

This document is an outline for non-federal applicants to use when making a consistency certification under the Coastal Zone Management Act, Sections 307(c)(3)(A) and 307(d). Although applicants are not required to make findings with respect to the coastal effects of the advisory policies, applicants shall demonstrate adequate consideration of policies which are in the nature of recommendations (see 15 CFR 930.58(a)(3)).

Coastal Zone Management Act (CZMA) Consistency Certification

This document provides the Commonwealth of Virginia with the [name of applicant's] Consistency Certification and necessary data and information under CZMA Section 307(c)(3)(A) and 15 CFR Part 930, subpart D, for the [name of activity].

Certification:

[Name of applicant] certifies that the proposed activity complies with the enforceable policies of Virginia's Coastal Zone Management Program (VCP) and will be conducted in a manner consistent with the VCP.

Necessary Data and Information:

1. [Describe the federal license or permit activity or reference relevant pages of the federal application, any associated facilities, and coastal effects. Provide materials which will facilitate evaluation of coastal effects.]
2. [Provide additional information required by the State pursuant to 15 CFR Section 930.58(a)(2) and 930.58(a)(3). For example, the location of the project must be clearly identified on a U.S. Geological Survey topographic map or its equivalent and a site plan provided for development projects. The certification must fully describe the project and, in particular, aspects of the project that may cause direct or indirect environmental impacts. Description of the site must be thorough and include information on existing conditions. The purpose of this section is to make the reviewer aware of what is being proposed, important design features, how the facility will be operated, and the purpose of the facility.]
3. [Provide an evaluation that includes a set of findings relating to the probable coastal effects of the proposed project and its associated facilities to the relevant enforceable policies of the Virginia Coastal Zone Management Program.]

[Contact appropriate agencies administering the enforceable policies of the VCP to help determine relevant enforceable policies.]

By this certification that the [project] is consistent with the Virginia Coastal Zone Management Program, Virginia is notified that it has six months from the receipt of this letter and accompanying information in which to concur with or object to [applicant's name] certification. Pursuant to 15 CFR Section 930.63(b), if Virginia has not issued a decision within three months following commencement of State agency review, it shall notify [name of applicant] and the federal agency of the status of the matter and the basis for further delay. The State's concurrence, objection, or notification of review status shall be sent to: [provide applicant and federal agency's contact information].

Listed Federal Agency Activities

Table 1.

Federal agencies and their activities for which consistency determinations must be prepared if the activities can have any reasonably foreseeable effects on Virginia's coastal uses and resources. Whether an activity is listed or not, it is the federal agency's responsibility to provide the VCP with consistency determinations for federal agency activities affecting the coastal zone.

- All federal development projects inside the coastal zone are automatically subject to consistency and require a consistency determination
- National Marine Fisheries Service – Fishery Management Plans
- Army Corps of Engineers – Public works projects including but not limited to dredging, breakwaters, navigation aids, reservoirs, beach nourishment, etc.
- Air Force, Army, or Navy – Location, acquisition, and design of new or expanded defense installations and related activities
- Fish and Wildlife Service – Acquisition and management, including development of master plans for National Wildlife Refuges
- National Park Service – Acquisition and management, including development of Master Plans for National Parks and Seashores
- Coast Guard – Location, acquisition, and design of new or expanded facilities as well as closure of existing facilities
- Federal Aviation Administration – Construction, maintenance, and demolition of federal aids to navigation
- General Services Administration – Disposal of surplus federal land, property acquisition, and building construction

Listed Federal Permit, License, Approval Activities

Table 2.

Federal permits or licenses which require federal consistency reviews if the permitted activity affects land or water uses in the coastal zone.

Army Corps of Engineers –

- Section 9 or 10 permits pursuant to the Rivers and Harbors Act
- Section 404 permit pursuant to the Clean Water Act
- Section 103 permit pursuant to the Marine Protection, Research, and Sanctuaries Act

Federal Energy Regulatory Commission –

- Licenses for non-federal hydroelectric projects pursuant to Section 4 of the Federal Power Act
- Abandonment of gas pipelines pursuant to Section 7 of the Natural Gas Act
- Certificates authorizing construction and operation of facilities for the transportation and/or storage of natural gas pursuant to Section 7 of the Natural Gas Act

Economic Regulatory Commission –

- Options for permission to deliver or receive imported liquefied natural gas

Bureau of Land Management and Minerals Management Service –

- Permits for pipeline rights-of-way for oil and gas transmission on the Outer Continental Shelf

Coast Guard –

- Licenses for the construction and operation of deepwater ports pursuant to the Deepwater Port Act
- Permit for construction and modification of bridge structures across navigable waters of the United States

Federal Aviation Administration –

- Permits and licenses for the construction, operation, or alteration of airports

Environmental Protection Agency –

- National Pollutant Discharge Elimination System (NPDES) permit pursuant to Sections 402 and 403 of the Clean Water Act
- Ocean dumping permits
- Section 102 permits, designation of ocean dumping and incineration sites, pursuant to the Marine Protection, Research, and Sanctuaries Act

Nuclear Regulatory Commission –

- Permits and licenses required for the construction and operation of a nuclear plant

Interstate Commerce Commission –

- Abandonment of rail lines

National Park Service –

- Expenditures of Land and Water Conservation Funds and National Historic Preservation Funds

Listed Federal Assistance Activities

Table 3.

Federally funded state and local government activities for which consistency certifications must be submitted if the activity directly affects the coastal zone.

Department of Housing and Urban Development –

- Community Development Block Grants

USDA Rural Development –

- Loans and Grants

Fish and Wildlife Service –

- Wildlife Management Plans

National Park Service –

- Parks and Recreation Development Plans
- Historic Site Preservation Plans
- Waterfront Development Activities



Virginia's Coastal Zone

**STATE AGENCIES NORMALLY INVOLVED IN REVIEWING
FEDERAL CONSISTENCY DOCUMENTS**

DEPARTMENT OF ENVIRONMENTAL QUALITY:

Coordinators: **OFFICE OF ENVIRONMENTAL IMPACT REVIEW**
629 East Main Street, 6th Floor
Richmond, VA 23219

Ellie L. Irons, Program Manager, Ellie.Irons@deq.virginia.gov - 804/698-4325
John E. Fisher, John.Fisher@deq.virginia.gov - 804/698-4339
Julia Wellman, Julia.Wellman@deq.virginia.gov - 804/698-4326
FAX - 804/698-4319

DIVISION OF AIR PROGRAM COORDINATION:

Mr. Kotur S. Narasimhan, Kotur.Narasimhan@deq.virginia.gov
Air Data Analysis Program
629 East Main Street, 8th Floor
Richmond, VA 23219
804/698-4415
804/698-4510 FAX

OFFICE OF WETLANDS & WATER PROTECTION COORDINATION

Mr. Dave Davis, Dave.Davis@deq.virginia.gov
Wetlands & Water Protection Program
629 East Main Street, 9th Floor
Richmond, VA 23219
804/698-4105
804/698-4347 FAX

DEQ COASTAL REGIONAL OFFICES:

Mr. David Hartshorn
David.Hartshorn@deq.virginia.gov
Northern Regional Office
13901 Crown Court
Woodbridge, VA 22193
703/583-3895
703/583-3871 FAX

Ms. Cindy Keltner
Cindy.Keltner@deq.virginia.gov
Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462
757/518-2167
757/518-2009 FAX

Ms. Kelley Harris West
Kelley.West@deg.virginia.gov
Piedmont Regional Office
4949-A Cox Road
Glen Allen, VA 23060-6295
804/527-5029
804/527-5106 FAX

DEPARTMENT OF CONSERVATION & RECREATION

Ms. Robbie Rhur
Robbie.Rhur@dcr.virginia.gov
DCR-Div. of Planning & Recreation Resources
Zincke Bldg., 203 Governor St., 3rd Floor
Richmond, VA 23219
804/371-2594
804/371-7899 FAX

DCR's DIVISION OF STORMWATER MANAGEMENT-LOCAL IMPLEMENTATION

Ms. Joan Salvati
Joan.Salvati@dcr.virginia.gov
900 East Main Street, 8th Floor
Richmond, VA 23219-3558
804/225-3444
804/225-3447 FAX

DEPARTMENT OF GAME & INLAND FISHERIES

Ms. Amy M. Ewing
Amy.Ewing@dgif.virginia.gov
4010 West Broad Street
Richmond, VA 23230
804/367-2211
804/367-2427 FAX

DEPARTMENT OF HEALTH

Mr. Barry E. Matthews, P.G.
Barry.Matthews@vdh.virginia.gov
Va. Dept of Health - Office of Drinking Water
Construction Assistance, Planning, & Policy
109 Governor Street, Room 634
Richmond, VA 23219
804/864-7515; 804/864-7521 FAX

VIRGINIA MARINE RESOURCES COMMISSION

Mr. Tony Watkinson
Tony.Watkinson@mrc.virginia.gov
2600 Washington Avenue
Newport News, VA 23607
757/247-2255
757/247-8062 FAX

VIRGINIA INSTITUTE OF MARINE SCIENCE

Ms. Pam Mason
mason@wm.edu
Virginia Institute of Marine Science
Rt. 1208, Greate Road, P.O. Box 1346
Gloucester Point, VA 23062
804/684-7158
804/684-7179 FAX

OTHER AGENCIES SOMETIMES INVOLVED IN REVIEW PROCESS:

DEPARTMENT OF HISTORIC RESOURCES

Mr. Roger Kirchen
Roger.Kirchen@dhr.virginia.gov
2801 Kensington Avenue
Richmond, VA 23221
804/367-2323, Ext. 153
804/367-2391 FAX

DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES

Mr. Keith Tignor
Keith.Tignor@vdacs.virginia.gov
Office of Plant & Pest Services
1100 Bank Street
Richmond, VA 23219
804/786-3515
804/371-7793 FAX

DEPARTMENT OF MINES, MINERALS & ENERGY

Mr. David Spears
David.Spears@dmme.virginia.gov
Department of Mines, Minerals and Energy
Division of Geology and Mineral Resources
900 Natural Resources Drive, Suite 500
Charlottesville, VA 22903
434/951-6350

VIRGINIA DEPARTMENT OF TRANSPORTATION

Mr. Chris Adkins
Chris.Adkins@vdot.virginia.gov;
Environmental Division
1401 East Broad Street
Richmond, VA 23219
804/786-5360; 804/786-0868
804/786-7401 FAX

DEPARTMENT OF AVIATION

Mr. R. N. (Rusty) Harrington, Manager
Rusty.Harrington@doav.virginia.gov
Planning & Environmental Section
5702 Gulfstream Road
Richmond, VA 23250-2422
804/236-3632, Ext. 106
804/236-3635 FAX

VIRGINIA PORT AUTHORITY

Mr. Jeffrey A. Florin, Chief Engineer
JFlorin@portofvirginia.com
Director, Port Development
600 World Trade Center
Norfolk, VA 23510
757/683-2153 (Michelle Wallace, Assistant to Mr. Florin)
757/683-8500 FAX

DEPARTMENT OF FORESTRY

Mr. Todd Groh
Todd.Groh@dof.virginia.gov
900 Natural Resources Dr., Ste. 800
Charlottesville, VA 22903
434/220-9044
434/296-2369 FAX

